



Capital Gains Tax Treatment on Sale of Shares to Company - LIFE ADVISORY SERVICES

In certain circumstances where a company redeems its shares, any amount paid by the company in excess of the original issue price is treated as a 'distribution' rather than a capital gain.

The implications of this treatment, with regard to a company purchasing its own shares as a result of a corporate shareholder protection arrangement, would be as follows:

- a) The company would be obliged to apply Dividend Withholding Tax ("DWT") at the standard rate of 20% on the distribution, and
- b) The vendor of the shares would be liable to income tax under Schedule F on the gross amount of the distribution.

The income tax treatment outlined above would obviously make the purchase of shares by the company unattractive to most vendors.

Section 176 Taxes Consolidation Act 1997 provides that the purchase by an unquoted trading company of its own shares will not be treated as a distribution, subject to certain requirements being fulfilled. Where these requirements are met the sale of the shares would instead be treated as a disposal for Capital Gains Tax purposes.

The vendor must meet seven separate requirements to obtain the Capital Gains Tax treatment on the sale of his / her shares to the company.

These can be summarised as follows:

- (1) The company must be an unquoted trading company.
- (2) The purchase of the shares by the company must be for the benefit of the trade.
- (3) The purchase of the shares by the company must not be part of any scheme to enable the shareholders to benefit from the profits of the company without taking a dividend.
- (4) The vendor of the shares must be resident and ordinarily resident in the State for the year when the shares are purchased.
- (5) The shares must be owned by the vendor for at least 5 years before the shares are purchased, or 3 years if the shares are being purchased on death.
- (6) The vendor and his / her associates - i.e. spouse or civil partner and children under 18 living with their parents - must reduce their shareholding by at least 25%, as a result of the purchase.
- (7) The vendor and his / her associates combined must have less than 30% of the equity of the company after the purchase.

ALL TESTS MUST BE MET TO QUALIFY FOR CAPITAL GAINS TAX TREATMENT

We advise that your client seeks professional tax and legal advice as the information given is a guideline only and does not take into account your client's particular circumstances.

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LAS (02/16)

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